

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RODNEY GAINES,) Case No. CV 14-1509-TJH (JPR)
Plaintiff,)
vs.) ORDER DISMISSING PLAINTIFF'S
COUNTY OF LOS ANGELES et) FIRST AMENDED COMPLAINT WITH
al.) LEAVE TO AMEND
Defendants.)
)

On February 27, 2014, Plaintiff, a prisoner at the California Rehabilitation Center in Norco, lodged pro se a civil-rights action and was subsequently granted in forma pauperis status. On April 11, 2014, Plaintiff filed a First Amended Complaint ("FAC") against the County of Los Angeles; Sheriff's Deputies Christopher J. McMaster, Steven Lehrman, and Roger Izzo; Deputy District Attorney Joseph D. Payne; and Does one through 10. (FAC at ¶¶ 4-8.) Plaintiff's claims arise out of his state criminal proceeding and the events underlying it, which were also the subject of a federal habeas petition that was granted by this Court in part.

1 In May 2006, Plaintiff was charged in an amended information
 2 in state superior court with one count of sale, transportation,
 3 or offer to sell cocaine base under California Health & Safety
 4 Code section 11352(a) and one count of possession of a smoking
 5 device under section 11364(a). Gaines v. Stolc, No.

6 2:11-cv-02181-TJH-JPR, at 3 (C.D. Cal. Nov. 14, 2011) (report and
 7 recommendation). Although Plaintiff had never been charged with
 8 possession of cocaine base under Health & Safety Code section
 9 11350, the trial court nonetheless sua sponte instructed the jury
 10 on that charge and provided the jury with a verdict form for it.
 11 Id. On May 15, 2006, the jury acquitted Plaintiff of the sales
 12 charge but convicted him of possessing a smoking device and the
 13 uncharged possession-of-cocaine-base offense. (Id.) In June
 14 2006, Plaintiff was sentenced to 11 years' imprisonment. (Id.)

15 Plaintiff appealed to the California Court of Appeal,
 16 raising a due process claim based on the trial court's
 17 instructing the jury on the simple-possession charge and allowing
 18 it to convict him of that crime. Id. The court of appeal agreed
 19 that the trial court erred but found that Plaintiff had forfeited
 20 his claim by failing to object to the instruction or the verdict
 21 form at trial. Id. Plaintiff later raised the due process claim
 22 in a Petition for Review and habeas petition to the California
 23 Supreme Court, which denied it both times. Id. at 3-4.

24 Plaintiff then filed a federal habeas petition in this
 25 Court. The Court found that Plaintiff's right to due process was
 26 violated when he was convicted of a crime with which he was never
 27 charged and that Respondent had waived any procedural-bar
 28 defense. Id. at 11; see also Gaines, No. 2:11-cv-02181-TJH-JPR,

1 at 4 (C.D. Cal. Feb. 16, 2012) (order and judgment). It
 2 therefore entered judgment conditionally granting the petition
 3 and ordering that Plaintiff be discharged from "all consequences
 4 of his conviction pursuant to California Health & Safety Code
 5 § 11350 in Los Angeles Superior Case No. MA032254" unless he was
 6 brought to retrial within a certain period of time. Gaines, No.
 7 2:11-cv-02181-TJH-JPR, at 6-7 (C.D. Cal. Feb. 16, 2012) (order
 8 and judgment). The Court did not disturb Plaintiff's conviction
 9 for possession of a smoking device under section 11364(a).¹ The
 10 state apparently declined to retry Plaintiff. (FAC ¶ 10.)

11 In the instant civil-rights action, Plaintiff alleges that
 12 Defendants violated his rights under the U.S. Constitution and
 13 state law in various ways by arresting him on June 11, 2005, and
 14 subsequently prosecuting him. Specifically, Plaintiff alleges
 15 that Defendants L.A. County, McMaster, Lehrman, Izzo, and Does
 16 violated the Fourth and 14th amendments by falsely arresting and
 17 imprisoning him (FAC ¶¶ 16-26), using excessive force against him
 18 (FAC ¶¶ 27-30), maliciously prosecuting him (FAC ¶¶ 31-35), and
 19 conspiring to violate his constitutional rights (FAC ¶¶ 36-38);
 20 Defendants L.A. County, Payne, and Does violated the Fourth and
 21 14th amendments by maliciously prosecuting him (FAC ¶¶ 39-41);
 22 Defendants County, McMaster, Lehrman, Izzo, Payne, and Does
 23 violated state law by falsely imprisoning him (FAC ¶¶ 42-43);
 24 Defendants County, McMaster, Lehrman, and Does violated state law
 25 by committing assault and battery on him (FAC ¶¶ 44-47);
 26

27 ¹Plaintiff incorrectly argues that the Court "ordered
 28 Plaintiff to be released if the State did not retry him." (FAC
 ¶ 10.)

1 Defendants County, Payne, and Does violated state law by failing
 2 to arraign him on the possession charge (FAC ¶¶ 48-52); and
 3 Defendants County, McMaster, Lehrman, Izzo, Payne, and Does
 4 violated state law by negligently inflicting emotional distress
 5 on him (FAC ¶ 53).

6 After screening the FAC in accordance with 28 U.S.C.
 7 §§ 1915(e)(2) and 1915A prior to ordering service, the Court
 8 finds that much of it fails to state a claim upon which relief
 9 might be granted.

10 Because it appears to the Court that at least some of the
 11 deficiencies of the FAC are capable of being cured by amendment,
 12 it is dismissed with leave to amend. See Lopez v. Smith, 203
 13 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc) (holding that pro se
 14 litigant must be given leave to amend complaint unless absolutely
 15 clear deficiencies cannot be cured by amendment). If Plaintiff
 16 desires to pursue this action, he is ORDERED to file a Second
 17 Amended Complaint ("SAC") within 28 days of the service date of
 18 this Order, remedying the deficiencies discussed below.²

19 **STANDARD OF REVIEW**

20 The Court's screening of a complaint under 28 U.S.C.
 21 §§ 1915(e)(2) and 1915A is governed by the following standards.
 22 A complaint may be dismissed as a matter of law for failure to
 23 state a claim "where there is no cognizable legal theory or an
 24 absence of sufficient facts alleged to support a cognizable legal
 25 theory." Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d

27 ²It appears that at least some of Plaintiff's claims may be
 28 barred by the applicable statute of limitations, but that is an
 affirmative defense to be raised by Defendants.

1 1035, 1041 (9th Cir. 2010) (internal quotation marks omitted);
2 accord O'Neal v. Price, 531 F.3d 1146, 1151 (9th Cir. 2008). In
3 considering whether a complaint states a claim, a court must
4 accept as true all the factual allegations in it. Ashcroft v.
5 Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d
6 868 (2009); Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir.
7 2011). The court need not accept as true, however, "allegations
8 that are merely conclusory, unwarranted deductions of fact, or
9 unreasonable inferences." In re Gilead Scis. Sec. Litig., 536
10 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation marks
11 omitted); see also Shelton v. Chorley, 487 F. App'x 388, 389 (9th
12 Cir. 2012) (finding that district court properly dismissed claim
13 when plaintiff's "conclusory allegations" did not support it).
14 Although a complaint need not include detailed factual
15 allegations, it "must contain sufficient factual matter, accepted
16 as true, to 'state a claim to relief that is plausible on its
17 face.'" Iqbal, 556 U.S. at 678 (quoting Bell Atl. Corp. v.
18 Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d
19 929 (2007)). A claim is facially plausible when it "allows the
20 court to draw the reasonable inference that the defendant is
21 liable for the misconduct alleged." Iqbal, 556 U.S. at 678. "A
22 document filed pro se is to be liberally construed, and a pro se
23 complaint, however inartfully pleaded, must be held to less
24 stringent standards than formal pleadings drafted by lawyers."
25 Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200, 167
26 L. Ed. 2d 1081 (2007) (citations and internal quotation marks
27 omitted).
28

1 DISCUSSION
23 I. Plaintiff's § 1983 Claims for Unlawful Arrest and
4 Imprisonment, Malicious Prosecution, and Conspiracy Must Be
Dismissed5 Plaintiff alleges that Defendants Los Angeles County,
6 McMaster, Lehrman, Izzo, and Does violated his rights under the
7 Fourth and 14th amendments by falsely arresting and imprisoning
8 him, maliciously prosecuting him, and conspiring to violate his
9 civil rights. (FAC ¶¶ 16-26, 31-43.) In support, Plaintiff
10 contends that he did "absolutely nothing" to give Defendants
11 "reason to believe a crime was committed" and that they therefore
12 "had no reason to detain or search Plaintiff" or to "report that
13 Plaintiff had committed a crime." (FAC ¶ 18.) Plaintiff also
14 notes that he was acquitted of the charge of selling cocaine base
15 and his conviction of simple possession was overturned on federal
16 habeas review. (FAC ¶¶ 9-10). Plaintiff's claims must be
17 dismissed because they are barred by Heck v. Humphrey, 512 U.S.
18 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994), and for other
19 reasons.20 In Heck v. Humphrey, the U.S. Supreme Court held that if a
21 judgment in favor of a plaintiff in a civil rights action would
22 necessarily imply the invalidity of his or her conviction or
23 sentence, the complaint must be dismissed unless the plaintiff
24 can demonstrate that the conviction or sentence has been
25 invalidated. 512 U.S. at 486-87; see also Smith v. City of
26 Hemet, 394 F.3d 689, 695 (9th Cir. 2005) (en banc) ("Heck says
27 that if a criminal conviction arising out of the same facts
28 stands and is fundamentally inconsistent with the unlawful

1 behavior for which section 1983 damages are sought, the 1983
2 action must be dismissed." (internal quotation marks omitted)).
3 Thus, the "relevant question" in a § 1983 suit is whether success
4 would "'necessarily imply' or 'demonstrate' the invalidity of the
5 earlier conviction or sentence." Id. (quoting Heck, 512 U.S. at
6 487).

7 To prevail on claims for false arrest and imprisonment,
8 Plaintiff would have to demonstrate that Defendants had no
9 probable cause to arrest him. See Cabrera v. City of Huntington
10 Park, 159 F.3d 374, 380 (9th Cir. 1998). Similarly, to prevail
11 on his malicious-prosecution claim, Plaintiff would have to
12 demonstrate that Defendants prosecuted him with malice and
13 without probable cause. See Awabdy v. City of Adelanto, 368 F.3d
14 1062, 1066 (9th Cir. 2004) ("In order to prevail on a § 1983
15 claim of malicious prosecution, a plaintiff must show that the
16 defendants prosecuted him with malice and without probable cause,
17 and that they did so for the purpose of denying him equal
18 protection or another specific constitutional right." (internal
19 quotation marks and alterations omitted)). But such findings
20 would imply that Plaintiff's conviction for possession of a
21 smoking device, which apparently arose out of the same events as
22 the other criminal allegations, is invalid. (See FAC ¶ 33
23 (alleging that Defendants McMaster, Lehrman, and Izzo falsely
24 stated that Plaintiff had "handed [Izzo] a pipe and cocaine
25 base"); see also Guerrero v. Gates, 442 F.3d 697, 703 (9th Cir.
26 2006) ("Wrongful arrest, malicious prosecution, and a conspiracy
27 among Los Angeles officials to bring false charges against
28 [plaintiff] could not have occurred unless he were innocent of

1 the crimes for which he was convicted."); Awabdy, 368 F.3d at
 2 1068 ("An individual seeking to bring a malicious prosecution
 3 claim must generally establish that the prior proceedings
 4 terminated in such a manner as to indicate his innocence."); see
 5 also Devenpeck v. Alford, 543 U.S. 146, 153-54, 125 S. Ct. 588,
 6 594, 160 L. Ed. 2d 537 (2004) (when probable cause to arrest for
 7 any crime exists, arrest does not violate the Fourth Amendment
 8 whether or not that crime was actually charged); Page v. Stanley,
 9 No. CV 11-2255 CAS (SS), 2012 WL 1535691, at *8 (C.D. Cal. Mar.
 10 23, 2012) ("[W]hen a conviction on one charge is accompanied by a
 11 contemporaneous acquittal on another charge in the same
 12 proceeding, a malicious prosecution claim based on the acquittal
 13 may proceed if the charges aim to punish different conduct."
 14 (quotation marks and alteration omitted and emphasis added)),
 15 accepted by 2012 WL 1535687 (C.D. Cal. May 1, 2012).³ Here,
 16

17 ³In Jackson v. Barnes, the plaintiff was convicted at his
 18 first trial on evidence obtained in violation of his Miranda
 19 rights, and after the conviction was reversed on federal habeas
 20 corpus review, he was again convicted, this time without the use of
 21 the illegally obtained evidence. ___ F.3d __, 2014 WL 1324448, at
 22 *1 (9th Cir. Apr. 15, 2014). The plaintiff then sued for the
 23 violation of his Miranda rights at his first trial. Id. The Ninth
 24 Circuit held that the plaintiff's claim was not Heck barred because
 25 his conviction in the second trial was "insulated from the
 26 inculpatory statements that [were] the subject of [his] § 1983
 27 suit"; as such, a judgment in his favor would have no bearing on
 28 his conviction. Id. at *3. Here, however, Plaintiff bases his
 § 1983 suit on the alleged unlawfulness of his arrest,
 imprisonment, and prosecution, not the due process violation that
 resulted in the reversal of his possession charge on federal habeas
 corpus review. And as discussed above, a favorable finding on
 those claims would call into question his conviction for possession
 of a smoking device, which resulted from the very same arrest and
 prosecution as the overturned possession charge. As such, Jackson
 does not apply here.

1 Plaintiff acknowledges that the two charges against him arose
2 from the same conduct, "hand[ing Izzo] a pipe and cocaine base."
3 (FAC ¶ 33.)

4 To the extent Plaintiff claims that Defendants conspired to
5 commit the unlawful acts, moreover, that claim is also barred by
6 Heck. See Cooper v. Ramos, 704 F.3d 772, 784-85 (9th Cir. 2012)
7 (finding plaintiff's claim alleging "broad conspiracy to obtain
8 [his] conviction and keep him incarcerated" was "an effort to
9 attack the integrity of the investigation and trial" and
10 therefore barred by Heck). And Plaintiff's conspiracy claim also
11 fails because he has not alleged sufficient facts to support a
12 finding that any Defendants agreed to violate his civil rights.
13 See Crowe v. Cnty. of San Diego, 608 F.3d 406, 440 (9th Cir.
14 2010) ("To establish liability for a conspiracy in a § 1983 case,
15 a plaintiff must demonstrate the existence of an agreement or
16 meeting of the minds to violate constitutional rights." (internal
17 quotation marks omitted)); Olsen v. Idaho St. Bd. of Med., 363
18 F.3d 916, 929 (9th Cir. 2004) ("To state a claim for conspiracy
19 to violate constitutional rights, the plaintiff must state
20 specific facts to support the existence of the claimed
21 conspiracy." (internal quotation marks omitted)). Moreover, to
22 the extent Plaintiff alleges that Defendants conspired against
23 him in violation of § 1985 (see FAC at 8), his claim fails for
24 the additional reason that he has not alleged any facts showing
25 that Defendants were motivated by racial or class-based
26 discriminatory animus. See Bray v. Alexandria Women's Health
27 Clinic, 506 U.S. 263, 267-68, 113 S. Ct. 753, 758, 122 L. Ed. 2d
28 34 (1993) (to state claim under § 1985(3), plaintiff must allege

1 " (1) that some racial, or perhaps otherwise class-based,
 2 invidiously discriminatory animus lay behind the conspirators'
 3 action, and (2) that the conspiracy aimed at interfering with
 4 rights that are protected against private, as well as official,
 5 encroachment" (citations and internal quotation marks omitted)).

6 Accordingly, Plaintiff's §§ 1983 and 1985 claims for
 7 wrongful arrest and imprisonment, malicious prosecution, and
 8 conspiracy to violate his constitutional rights are dismissed.

9 See Trimble v. City of Santa Rosa, 49 F.3d 583, 585 (9th Cir.
 10 1995) (dismissal under Heck is "required to be without prejudice
 11 so that [plaintiff] may reassert his claims if he ever succeeds
 12 in invalidating his conviction").

13 **II. Defendant Payne is Entitled to Absolute Immunity**

14 Plaintiff asserts that Deputy District Attorney Payne
 15 maliciously prosecuted him in violation of the Fourth and 14th
 16 amendments. (FAC ¶¶ 39-41.) In support, Plaintiff contends that
 17 Payne furthered a "scheme to illegally commit Plaintiff" for the
 18 uncharged crime of possession in various ways. (See FAC ¶¶ 11-
 19 14.) Plaintiff's claims against Payne must be dismissed because
 20 he is entitled to prosecutorial immunity.

21 Section 1983 claims for monetary damages against prosecutors
 22 are barred by absolute prosecutorial immunity, provided the
 23 claimed violations are based on their activities as legal
 24 advocates in criminal proceedings.⁴ Van de Kamp v. Goldstein,
 25 555 U.S. 335, 342-43, 129 S. Ct. 855, 861, 172 L. Ed. 2d 706
 26 (2009); Imbler v. Pachtman, 424 U.S. 409, 430-31, 96 S. Ct. 984,

27
 28 ⁴Plaintiff does not request any relief other than money
 damages. (FAC at 11-12.)

1 994-95, 47 L. Ed. 2d 128 (1976). Plaintiff asserts that Payne
 2 violated his rights in several ways during the course of his
 3 criminal trial - including by failing to arraign Plaintiff on the
 4 possession charge or later move to dismiss it, submitting to the
 5 court a probation report containing allegedly false information,
 6 and making a sentencing recommendation (FAC ¶¶ 11-14, 40) - but
 7 all of that conduct is squarely protected by prosecutorial
 8 immunity.⁵ See, e.g., Imbler, 424 U.S. at 430 (prosecutorial
 9 immunity applies with "full force" to activities "intimately
 10 associated with the judicial phase of the criminal process");
 11 Broam v. Boqan, 320 F.3d 1023, 1029 (9th Cir. 2003) ("If the
 12 action was part of the judicial process, the prosecutor is
 13 entitled to the protection of absolute immunity whether or not he
 14 or she violated the civil plaintiff's constitutional rights.");
 15 Genzler v. Longanbach, 410 F.3d 630, 637 (9th Cir. 2005) (noting
 16 that prosecutor "enjoys absolute immunity from a suit alleging
 17 that he maliciously initiated a prosecution, used perjured
 18 testimony at trial, or suppressed material evidence at trial,"
 19 among other things).

20 Because Payne is entitled to immunity, the § 1983 claim
 21 against him must be dismissed.

22 **III. Plaintiff Has Failed to State a Claim Against L.A. County**

23 Plaintiff's claims against L.A. County must also be
 24 dismissed because he has failed to allege that his injuries
 25 resulted from any county policy or practice.

27 Plaintiff acknowledges that Payne objected to the possession
 28 charge but the trial court nevertheless "ordered the jury to
 consider [it]." (FAC ¶ 11.)

1 Municipalities and other local government units are
2 considered "persons" under § 1983 and therefore may be liable for
3 causing a constitutional deprivation. Monell v. Dep't of Soc.
4 Servs., 436 U.S. 658, 690-91, 98 S. Ct. 2018, 2036, 56 L. Ed. 2d
5 611 (1978); Long v. Cnty. of L.A., 442 F.3d 1178, 1185 (9th Cir.
6 2006). Because no respondeat superior liability exists under
7 § 1983, a municipality is liable only for injuries that arise
8 from an official policy or longstanding custom. Monell, 436 U.S.
9 at 694; City of Canton v. Harris, 489 U.S. 378, 385, 109 S. Ct.
10 1197, 1203, 103 L. Ed. 2d 412 (1989). A plaintiff must show
11 "that a [county] employee committed the alleged constitutional
12 violation pursuant to a formal governmental policy or a
13 longstanding practice or custom which constitutes the standard
14 operating procedure of the local governmental entity." Gillette
15 v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992) (internal
16 quotation marks omitted). In addition, he must show that the
17 policy was "(1) the cause in fact and (2) the proximate cause of
18 the constitutional deprivation." Trevino v. Gates, 99 F.3d 911,
19 918 (9th Cir. 1996). "Liability for improper custom may not be
20 predicated on isolated or sporadic incidents; it must be founded
21 upon practices of sufficient duration, frequency and consistency
22 that the conduct has become a traditional method of carrying out
23 policy." Id. at 918; Thompson v. Los Angeles, 885 F.2d 1439,
24 1443-44 (9th Cir. 1989) ("Consistent with the commonly understood
25 meaning of custom, proof of random acts or isolated events are
26 [sic] insufficient to establish custom."), overruled on other
27 grounds by Bull v. City & Cnty. of S.F., 595 F.3d 964, 981 (9th
28 Cir. 2010) (en banc).

1 A plaintiff may also establish municipal liability by
2 demonstrating that the alleged constitutional violation was
3 caused by a failure to train municipal employees adequately. See
4 Harris, 489 U.S. at 388. A plaintiff alleging a failure-to-train
5 claim must show the following: (1) he was deprived of a
6 constitutional right; (2) the municipality had a training policy
7 that "amounts to deliberate indifference to the constitutional
8 rights of the persons with whom [its police officers] are likely
9 to come into contact"; and (3) his constitutional injury would
10 not have happened had the municipality properly trained those
11 officers. Blankenhorn v. City of Orange, 485 F.3d 463, 484 (9th
12 Cir. 2007) (internal quotation marks omitted, alteration in
13 original).

14 Here, Plaintiff has failed to allege any facts regarding the
15 existence of a formal County regulation or policy that caused his
16 alleged injuries, see Gillette, 979 F.2d at 1346; Trevino, 99
17 F.3d at 918, nor has he alleged that the County maintained a
18 "longstanding practice or custom which constitutes the standard
19 operating procedure of the local government entity," Gillette,
20 979 F.2d at 1346-47 (internal quotation marks omitted); see also
21 Monell, 436 U.S. at 691 (noting that custom must be so
22 "persistent and widespread" that it constitutes a "permanent and
23 well settled" policy). Plaintiff has alleged only a single
24 incident each of excessive force, unlawful arrest and
25 imprisonment, and malicious prosecution, which even if assumed to
26 be unconstitutional are insufficient to establish Monell
27 liability. See Meehan v. L.A. Cnty., 856 F.2d 102, 107 (9th Cir.
28 1988) (two incidents not sufficient to establish custom).

1 Plaintiff's claims against the County therefore must be
2 dismissed.⁶

3 **IV. Compliance with Federal Rule of Civil Procedure 10(a)**

4 Federal Rule of Civil Procedure 10(a) requires that "the
5 title of the complaint must name all the parties." The title of
6 Plaintiff's Complaint is simply Rodney Gaines v. County of Los
7 Angeles, et al. In any amended complaint, Plaintiff must list
8 all the defendants in the caption or the complaint will be
9 subject to dismissal on that basis alone. See Ferdik v.

10 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992).⁷

11 *****

12 If Plaintiff desires to pursue any of the claims in the FAC,
13 he is ORDERED to file a Second Amended Complaint within 28 days
14 of the service date of this Order, remedying the deficiencies
15 discussed above. The SAC should bear the docket number assigned
16 to this case, be labeled "Second Amended Complaint," and be
17 complete in and of itself, without reference to the original
18 Complaint or any other pleading, attachment, or document. The
19 Clerk is directed to provide Plaintiff with another Central

21 ⁶The Supreme Court has held that an "official-capacity suit
22 is, in all respects other than name, to be treated as a suit
against the entity." Kentucky v. Graham, 473 U.S. 159, 166, 105 S.
23 Ct. 3099, 3015, 87 L. Ed. 2d 114 (1985); see also Brandon v. Holt,
24 469 U.S. 464, 471-72, 105 S. Ct. 873, 878, 83 L. Ed. 2d 878 (1985).
25 Plaintiff's claims against the County, the sheriff's deputies in
their official capacity, and Payne in his official capacity (FAC at
2-3) are therefore needlessly repetitive. In any SAC, Plaintiff
26 should omit any repetitive official-capacity claims.

27 ⁷If Plaintiff files a SAC that sufficiently states a federal
28 cause of action, the Court will address whether he has sufficiently
stated any state-law claim.

1 District of California Civil Rights Complaint Form, CV-66, to
2 facilitate Plaintiff's filing of a SAC if he elects to proceed
3 with this action. **Plaintiff is admonished that if he fails to**
4 **timely file a SAC, the Court will recommend that this action be**
5 **dismissed on the grounds set forth above and/or for failure to**
6 **diligently prosecute.**

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10 DATED: May 16, 2014



11 JEAN ROSENBLUTH
U.S. MAGISTRATE JUDGE

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